



Motorcycle Riders Foundation
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February 1, 2021

Ryan Posten
Associate Administrator for Rulemaking
National Highway Traffic Safety Administration
U.S. Department of Transportation
1200 New Jersey Avenue, SE
Washington, DC 20590

Re: Docket No. NHTSA-2020-0106
Request for Comment on “Framework for Automated Driving System Safety”

Dear Associate Administrator Posten,

On behalf of the Motorcycle Riders Foundation, thank you for the opportunity to submit comments regarding the recent announcement and proposed policy concerning automated driving systems (ADS). We recognize the far-reaching impact and potential to improve road safety that ADS have to offer. Further, we’re encouraged by the National Highway Safety Traffic Administration’s (NHTSA) approach at developing a transparent and collaborative policy to create meaningful guidelines for this next generation of vehicular technology. We look forward to working directly with NHTSA to ensure that any guidelines, procedures, or regulations promulgated, are considerate and inclusive of all road users, specifically motorcyclists.

The Motorcycle Riders Foundation (MRF) provides leadership at the federal level for state motorcyclists’ rights organizations as well as motorcycle clubs and individual riders. The MRF is chiefly concerned with issues at the national and international levels that impact the freedom and safety of American street motorcyclists. The MRF is committed to being a national advocate for the advancement of motorcycling and its associated lifestyle and works in conjunction with its partners to help educate elected officials and policymakers in Washington and beyond. As such, the MRF and its network of over 250,000 motorcyclists are pleased to offer the following comments.

Reducing traffic crashes involving motorcycles and decreasing the number of motorcycle operators and passengers injured or killed each year is a top priority for the MRF. A cornerstone of the MRF’s national agenda is to enhance safety for bikers across the U.S. With the expansion of advanced technologies like ADS, the MRF seeks assurances that the federal ADS policy includes key considerations that are unique to motorcycles.



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Though not opposed to ADS, the MRF maintains that federal authorities must require robust testing with regard to motorcycle recognition and responsiveness in ADS. In addition, federal authorities must ensure that safeguards surrounding cybersecurity have strong standards to ensure safety precautions and eliminate risks to motorcyclists. There must be clear liability in crashes. Finally, we offer general comments about the scope of the policy, perceived vagueness in key sections affecting motorcyclists, concerns over the role of individual states in regulating this technology moving forward, the education of the public on this technology and recent challenges related to spectrum use.

The Unique Attributes of Motorcycles Must Be a Key Consideration When Developing Testing Requirements for Automated Driving Systems

Given motorcyclists' smaller profile on our nation's roadways in comparison to automobiles, commercial trucks, and other road users, assurances and requirements must be met to ensure that any technology can adequately and appropriately identify and respond to motorcycles in all traffic situations. For motorcyclists, whose main concern includes the detection of their motorcycle on the road, we appreciate the safety assessment point in the guidance pertaining to "Object & Event Detection and Response" (OEDR). As we understand, this relates to detection by the ADS of any circumstance that is relevant to the immediate driving task and encourages automakers to have a documented process for assessment, testing, and validation of the vehicle's OEDR capabilities

Specifically, the MRF would envision a documented process to include specific references to motorcycles as a requirement in the vehicle's OEDR capabilities. Further, this documented process must be publicly available so that motorcyclists can better understand how a particular model of ADS accounts for motorcycles on the road.

In addition, the MRF recognizes that the guidance drafted by the agency simply lays out best practices and recommendations and therefore is not enforceable by law. OEDR is one of several areas in the guidance that should be considered to be formally adopted into law. Though manufacturers may have the very best intentions in ensuring autonomous vehicles are identifying and responding to other road users and objects, unless it carries the power of law, there will be concerns from many that this guidance falls short of protecting motorcyclists. We urge NHTSA to ensure that automakers and ADS manufacturers are required to account for motorcyclists on the road and this is formalized in a required safety assessment point pertaining to OEDR.



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Transportation Cybersecurity Systems Must Have Rigorous Standards to Ensure Safety for All Road Users

Motorcyclists across the nation have raised concerns that any technology and cybersecurity systems employed in ADS must have strong, required safety standards to adequately address and eliminate any risks to motorcyclists who are likely to share the road with autonomous vehicles.

There have been a number of instances related to transportation cybersecurity and a perceived vulnerability within the U.S. government's ability to help protect against breaches and other security failures that can put motor vehicle safety at risk. Unlike car safety checks like brakes, and seatbelts, which have been regulated for decades, cybersecurity in ADS has not been regulated nor has cybersecurity on entertainment systems or GPS navigation. In an age where security breaches are a common occurrence, the accepted practice has been to let automakers come up with their own solutions instead of imposing regulatory requirements. This is unacceptable and could be catastrophic as more ADS continue to emerge.

This concern is not voiced solely by motorcyclists, but pedestrians, cyclists and other road users who could quickly become targets of a security breach in an ADS. As ADS technology develops, cybersecurity related to the control of these vehicles must be carefully and closely regulated to ensure all roadway users are safe. Moreover, electronic security systems that govern ADS must have strong required standards to ensure safety and security in an effort to eliminate any risk to motorcyclists and other road users.

Clear Liability of Fault Must Be Established Relating to Crashes Involving Automated Driving Systems

As fully ADS become more prevalent on the road, it is a widely accepted supposition that crash rates will decrease. However, undoubtedly, crashes will still occur despite these technological advancements. When they do, it is critical to establish a clear process of who is at fault and is liable; whether that be the manufacturer or the software designer or the operator of a vehicle involved in a crash.

The MRF encourages NHTSA to not rely on legal mechanisms such as the tort system and litigation to address this issue. The concern in doing this, is that courts will rely on those parties with the greatest knowledge and control over these systems as experts, which is likely to be the manufacturers of these ADS. Given their position, these experts are likely to immediately look to



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place accountability on the other human party involved, especially if that other party was operating a non-automated automobile or motorcycle.

It is important that any consideration of liability give equal weight to the makers of ADS as well as operators involved in a crash. There is concern that the 'non-computerized' party will automatically be at fault. However, technology is not infallible; therefore, it is critical to ensure liability for any crashes involving ADS are not skewed towards any one party. Furthermore, victims of a collision should be able to seek damages from a driverless car manufacturer should the manufacturer be cited 'at fault.'

There are a number of complex legal questions surrounding the emergence of this technology and as such the MRF encourages NHTSA to give serious thought and consideration to the process for determining fault and establish clear guidelines surrounding future incidents.

General Concerns Over Vagueness & Scope of Automated Driving System Policy

Regulations Versus Guidance

While the MRF recognizes that NHTSA wrote the ADS guidance in an effort to be flexible in its approach, there is ambiguity and vagueness about what exactly is being requested of automakers. The MRF also understands that the authority of the Agency is limited, and that Congress will need to act to grant more authority to the Agency to govern ADS.

Though an underlying principle of the MRF is to limit government overreach, the issue of ADS is one that must be closely monitored to ensure the safety of all road users. ADS have the ability to affect many other parties in addition to the passengers of a self-driving vehicle. As such, it is critical to establish enforceable safety and security regulations that consider the safety of everyone on the road. The MRF looks forward to working with both Congress and NHTSA to ensure the Agency has the regulatory authority necessary to ensure the safety of this emerging class of vehicles.

Role of Individual States

The MRF recognizes and respects the autonomy and authority of the states for many of the issues that affect today's road users in areas like licensing. However, going forward, there needs to be an enforceable and clearly defined role for both the federal government and states when it comes to regulating ADS. In this instance, the MRF strongly encourages a robust federal regulatory



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plan concerning the safety checks and security considerations for ADS. This would help to avoid a ‘patchwork’ of laws addressing autonomous vehicles across 50 states. Instead, individual states should focus more on traditional functions as they do currently.

This area is crucial as a number of states have already begun taking steps to address the technology. According to the National Conference of State Legislators, since 2012, at least 41 states and D.C. have considered legislation related to ADS. As more and more automakers announce intentions to also utilize the technology, the number of states pursuing legislation on the issue will likely grow. The MRF encourages NHTSA to establish formal and enforceable regulations governing self-driving vehicles that would preempt or supersede any state laws or regulations.

Communication with the Public

The Motorcyclist Advisory Council (MAC), established by Congress and working under the guidance of the Federal Highway Administration, is an appropriate venue for the specific concerns of motorcyclists regarding ADS to be debated.

The MAC is responsible for providing advice and recommendations concerning infrastructure issues related to motorcyclist safety including barrier design, road design, construction, maintenance practices, and the architecture and implementation of intelligent transportation system technologies.

The MRF encourages policy makers at NHTSA to engage with the MAC in a public forum. This will allow board members of the MAC to advise and collaborate with NHTSA policy makers on the topic of ADS as it relates to motorcyclists.

Another important component of any framework for ADS involves the education of the public regarding the capabilities of this technology. A searchable public database that allows for information such as where, when and how these technologies are being tested on public roads is imperative. A public education campaign paired with this database would help ensure all roadway users understand the capabilities and limitations of this new technology.



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Spectrum

Last year the Federal Communication Commission (FCC) voted to open up part of the 5.9 GHZ spectrum previously reserved for automakers. For over 20 years that spectrum had been reserved in hopes that automakers would be able to utilize it in the development of ADS. In a quote from then U.S. Transportation Secretary Elaine Chao stated that the FCC decision would result in “thousands more deaths annually on-road and millions more injuries than would be the case otherwise.”

Specifically, we are worried that the potential for vehicle to vehicle dedicated short range communication may be threatened by this move. The MRF hopes that the framework developed by NHTSA will take into account the loss of this spectrum and the potential detrimental impact on the deployment of ADS.

Deployment vs Regulations

As was previously stated, while individual states have jumped headfirst into developing regulations for ADS, the federal government has taken a largely hands-off approach. The MRF is concerned that the private sector has used this gap between federal and state guidelines to prematurely test ADS across the country. In multiple states on-road-testing is occurring despite insufficient federal safety oversight and guidelines. As the technology continues to advance the MRF is troubled that the real-world deployment of ADS will continue to outpace the rule making process.

While we appreciate the need for a thorough rule making process, the facts on the ground are problematic. NHTSA and its state partners must ensure that important, long held safety guidelines are not bypassed in their quest to quickly test and deploy ADS.”

Conclusion

Members of the MRF look forward to working with NHTSA to ensure that the unique needs and requirements of motorcyclists across the U.S. are being considered and accounted for as the agency moves forward with future policies and regulations that address ADS. We share the hope expressed by NHSTA and other officials from the Department of Transportation that the emergence of these vehicles could help to lower the overall crash rates and make the nation’s roadways safer. However, with this new technology comes complex social and legal factors that must be taken into consideration when developing a framework of regulations and laws. We urge



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NHTSA to give heavy contemplation to the unique needs of motorcyclists on the road and adopt strong and clear regulations that ensure the safety of all of our nation's roadway users.

Sincerely,

Kirk R. Willard
President, Chairman of the Board
Motorcycle Riders Foundation